

ACT NO. 218 OF THE PUBLIC ACTS OF 1979, AS AMENDED

**PERTAINING TO THE REGULATION
OF ADULT FOSTER CARE FACILITIES**

Office of Children and Adult Licensing



STATE OF MICHIGAN
Department of Human Services

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ADULT FOSTER CARE FACILITY LICENSING ACT

Act 218 of 1979

An act to provide for the licensing and regulation of adult foster care facilities; to provide for the establishment of standards of care for adult foster care facilities; to prescribe powers and duties of the department of social services and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

The People of the State of Michigan enact:

400.701 Short title.

Sec. 1. This act shall be known and may be cited as the “adult foster care facility licensing act”.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.702 Meanings of words and phrases.

Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 to 7 have the meanings ascribed to them in those sections.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.703 Definitions; A.

Sec. 3. (1) “Adult” means: (a) A person 18 years of age or older.

(b) A person who is placed in an adult foster care family home or an adult foster care small group home pursuant to section 5(6) or (8) of 1973 PA 116, MCL 722.115.

(2) “Adult foster care camp” or “adult camp” means an adult foster care facility with the approved capacity to receive more than 4 adults to be provided foster care. An adult foster care camp is a facility located in a natural or rural environment.

(3) “Adult foster care congregate facility” means an adult foster care facility with the approved capacity to receive more than 20 adults to be provided with foster care.

(4) “Adult foster care facility” means a governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include any of the

following: (a) A nursing home licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(b) A home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) A hospital licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(d) A hospital for the mentally ill or a facility for the developmentally disabled operated by the department of community health under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(e) A county infirmary operated by a county department of social services or family independence agency under section 55 of the social welfare act, 1939 PA 280, MCL 400.55.

(f) A child caring institution, children's camp, foster family home, or foster family group home licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, if the number of residents who become 18 years of age while residing in the institution, camp, or home does not exceed the following: (i) Two, if the total number of residents is 10 or fewer.

(ii) Three, if the total number of residents is not less than 11 and not more than 14.

(iii) Four, if the total number of residents is not less than 15 and not more than 20.

(iv) Five, if the total number of residents is 21 or more.

(g) A foster family home licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, that has a person who is 18 years of age or older placed in the foster family home under section 5(7) of 1973 PA 116, MCL 722.115.

(h) An establishment commonly described as an alcohol or a substance abuse rehabilitation center, a residential facility for persons released from or assigned to adult correctional institutions, a maternity home, or a hotel or rooming house that does not provide or offer to provide foster care.

(i) A facility created by 1885 PA 152, MCL 36.1 to 36.12.

(5) "Adult foster care family home" means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee shall be a member of the household, and an occupant of the residence.

(6) "Adult foster care large group home" means an adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.

(7) “Adult foster care small group home” means an adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.

(8) “Aged” means an adult whose chronological age is 60 years of age or older or whose biological age, as determined by a physician, is 60 years of age or older.

(9) “Assessment plan” means a written statement prepared in cooperation with a responsible agency or person that identifies the specific care and maintenance, services, and resident activities appropriate for each individual resident’s physical and behavioral needs and well-being and the methods of providing the care and services taking into account the preferences and competency of the individual.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1981, Act 124, Imd. Eff. July 23, 1981;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 1984, Act 140, Imd. Eff. June 1, 1984;—Am. 1990, Act 262, Eff. Mar. 28, 1991;—Am. 1991, Act 161, Imd. Eff. Dec. 9, 1991;—Am. 1995, Act 82, Imd. Eff. June 15, 1995;—Am. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 1998, Act 442, Imd. Eff. Dec. 30, 1998.

400.704 Definitions; C to F.

Sec. 4. (1) “Council” means the adult foster care licensing advisory council created in section 8.

(2) “Department” means the family independence agency.

(3) “Developmental disability” means a disability as defined in section 500(h) of Act No. 258 of the Public Acts of 1974, being section 330.1500 of the Michigan Compiled Laws.

(4) “Director” means the director of the department.

(5) “Do-not-resuscitate order” means a document executed pursuant to section 3 of the Michigan do-not-resuscitate procedure act directing that, in the event a resident suffers cessation of both spontaneous respiration and circulation, no resuscitation will be initiated.

(6) “Foster care” means the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1996, Act 194, Eff. Aug. 1, 1996 .

400.705 Definitions; G to N.

Sec. 5. (1) “Good moral character” means good moral character as defined in Act No. 381 of the Public Acts of 1974, being sections 338.41 to 338.47 of the Michigan Compiled Laws.

(2) “Licensed hospice program” means a health care program that provides a coordinated set of services rendered at home or in an outpatient or institutional setting for individuals suffering from a disease or condition with a terminal prognosis and that is licensed under article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22260 of the Michigan Compiled Laws.

(3) “Licensee” means the agency, association, corporation, organization, person, or department or agency of the state, county, city, or other political subdivision, that has been issued a license to operate an adult foster care facility.

(4) “Mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(5) “New construction” means a newly constructed facility or a facility that has been completely renovated for use as an adult foster care facility.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 1996, Act 194, Eff. Aug. 1, 1996.

400.706 Definitions; P to Q.

Sec. 6. (1) “Personal care” means personal assistance provided by a licensee or an agent or employee of a licensee to a resident who requires assistance with dressing, personal hygiene, grooming, maintenance of a medication schedule as directed and supervised by the resident’s physician, or the development of those personal and social skills required to live in the least restrictive environment.

(2) “Physical disability” means a determinable physical characteristic of an individual that may result from disease, injury, congenital condition of birth, or functional disorder.

(3) “Physical plant” means the structure in which a facility is located and all physical appurtenances to the facility.

(4) “Protection”, subject to section 26a(2), means the continual responsibility of the licensee to take reasonable action to insure the health, safety, and well-being of a resident, including protection from physical harm, humiliation, intimidation, and social, moral, financial, and personal exploitation while on the premises, while under the supervision of the licensee or an agent or employee of the licensee, or when the resident’s assessment plan states that the resident needs continuous supervision.

(5) “Provisional license” means a license issued to a facility that has previously been licensed under this act or an act repealed by this act but is temporarily unable to conform to the requirements of a regular license prescribed in this act or rules promulgated under this act.

(6) “Quality of care” means the foster care of residents of a facility and other similar items not related to the physical plant that address themselves to the general physical and mental health, welfare, and well-being of residents.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1996, Act 194, Eff. Aug. 1, 1996;—Am. 1998, Act 442, Imd. Eff. Dec. 30, 1998.

400.707 Definitions; R to T.

Sec. 7. (1) "Regular license" means a license issued to an adult foster care facility which is in compliance with this act and the rules promulgated under this act.

(2) "Related" means any of the following relationships by marriage, blood, or adoption: spouse, child, parent, brother, sister, grandparent, aunt, uncle, stepparent, stepbrother, stepsister, or cousin.

(3) "Short-term operation" means an adult foster care facility which operates for a period of time less than 6 months within a calendar year.

(4) "Special license" means a license issued for the duration of the operation of an adult foster care facility if the licensee is a short-term operation.

(5) "Specialized program" means a program of services or treatment provided in an adult foster care facility licensed under this act that is designed to meet the unique programmatic needs of the residents of that home as set forth in the assessment plan for each resident and for which the facility receives special compensation.

(6) "Special compensation" means payment to an adult foster care facility to ensure the provision of a specialized program in addition to the basic payment for adult foster care. Special compensation does not include payment received by the adult foster care facility directly from the medicaid program for personal care services for a resident, or payment received under the supplemental security income program under title XVI of the social security act, 42 U.S.C. 1381 to 1383c.

(7) "Supervision" means guidance of a resident in the activities of daily living, including all of the following: (a) Reminding a resident to maintain his or her medication schedule, as directed by the resident's physician.

(b) Reminding a resident of important activities to be carried out.

(c) Assisting a resident in keeping appointments.

(d) Being aware of a resident's general whereabouts even though the resident may travel independently about the community.

(8) "Temporary license" means a license issued to a facility which has not previously been licensed pursuant to this act or to former Act No. 287 of the Public Acts of 1972.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

400.708 Adult foster care licensing advisory council; creation; appointment, qualifications, and terms of members; vacancy; compensation; schedule for reimbursement; content and enforcement of rules; conducting business at public meeting; availability of writings to public.

Sec. 8. (1) The adult foster care licensing advisory council is created within the department. The council shall consist of 11 members, appointed by the director. The

director shall appoint at least 1 member of the council from appropriate state and local agencies, private or public organizations, adult foster care providers, and residents of adult foster care facilities or their representatives. In appointing the first members of the council, the director shall appoint 3 members for a term of 1 year, 4 for 2 years, and 4 for 3 years. After the initial appointment, members shall serve 3-year terms. A vacancy shall be filled for the remainder of the unexpired term in the same manner as original appointments are made.

(2) The per diem compensation of the council members and the schedule for reimbursement of travel and other expenses shall be pursuant to the compensation and schedules established by the legislature. The council shall meet not more than once each month. The council shall advise the department on the content of rules and their enforcement.

(3) The business which the council may perform shall be conducted at a public meeting of the council held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(4) Except as provided in section 12, a writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.709 Administration of act; reports, procedures, inspections, and investigations; advice and technical assistance; consultations; cooperation with other agencies; education of public.

Sec. 9. (1) The department shall administer this act and shall require reports, establish procedures, make inspections, and conduct investigations pursuant to law to enforce the requirements of this act and the rules promulgated under this act.

(2) The department shall provide advice and technical assistance to facilities covered by this act to assist facilities in meeting the requirements of this act and the rules promulgated under this act. The department shall offer consultation, upon request, in developing methods for the improvement of service. The department shall cooperate with other state departments and agencies and local units of government in administering this act.

(3) The department shall provide education to the public regarding the requirements of this act through the ongoing use of mass media and other methods.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.710 Rules; variance, modification, or change; purposes; restriction; review.

Sec. 10. (1) The department shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws in the areas provided under subsection (4).

(2) The state fire safety board created under the fire prevention code, Act No. 207 of the Public Acts of 1941, as amended, being sections 29.1 to 29.33 of the Michigan Compiled Laws, shall promulgate rules providing for adequate fire prevention and safety in an adult foster care facility licensed or proposed to be licensed for more than 6 adults. The rules shall be promulgated in cooperation with the department and shall provide for the protection of the health, safety, and welfare of the adults residing in a facility. The state fire safety board shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended. A person may request a variance from the application of a rule promulgated pursuant to this subsection by application to the state fire marshal. The state fire marshal may make a variance upon a finding that the variance does not result in a hazard to life or property. The finding shall be transmitted to the person requesting the variance and shall be entered into the records of the department of state police. If the variance requested concerns a building, the finding shall also be transmitted to the governing body of the city, village, or township in which the building is located. The entire state fire safety board shall act as a hearing body in accordance with Act No. 306 of the Public Acts of 1969 to review and render decisions on a rule promulgated pursuant to this subsection or a ruling of the state fire marshal in the marshal's interpretation or application of these rules. After a hearing, the state fire safety board may vary the application of a rule or may modify the ruling or interpretation of the state fire marshal if the enforcement of the ruling or interpretation would do manifest injustice and would be contrary to the spirit and purpose of the rules or the public interest. A decision of the state fire safety board to vary the application of a rule, or to modify or change a ruling of the state fire marshal, shall specify in what manner the variance, modification, or change is made, the conditions upon which it is made, and the reasons for the variance, modification, or change.

(3) The department of mental health shall promulgate rules for the certification of specialized programs offered in an adult foster care facility to a mentally ill or developmentally disabled resident. The rules shall include provision for an appeal of a denial or limitation of the terms of certification to the department pursuant to chapter 4 of the administrative procedures act of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(4) The rules promulgated by the department under this act shall be restricted to the following: (a) The operation and conduct of adult foster care facilities.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of adults served.

(c) The general financial ability and competence of applicants to provide necessary care for adults and to maintain prescribed standards.

(d) The number of individuals or staff required to insure adequate supervision and care of the adults served.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate health standards to provide for the physical comfort, care, protection, and well-being of the adults received and maintenance of adequate fire protection for adult foster care facilities licensed to receive 6 or fewer adults. Rules promulgated in the areas provided by this subdivision shall be promulgated in cooperation with the state fire safety board.

(f) Provisions for food, clothing, educational opportunities, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of adults served.

(g) The type of programs and services necessary to provide appropriate care to each resident admitted.

(h) Provisions to safeguard the rights of adults served, including cooperation with rights protection systems established by law.

(i) Provisions to prescribe the rights of licensees.

(j) Maintenance of records pertaining to admission, progress, health, and discharge of adults. The rules promulgated under this subdivision shall include a method by which a licensee promptly shall notify the appropriate placement agency or responsible agent of any indication that a resident's assessment plan is not appropriate for that resident.

(k) Filing of reports with the department.

(l) Transportation safety.

(4) The rules shall be reviewed by the council not less than once every 5 years.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

400.711 Inspections; visitations; administration and enforcement of rules; reports; final determination as to license; public inspection of reports.

Sec. 11. (1) The director, the director's agent, or personnel of another department or agency, acting at the request of the director, may enter upon the premises of an applicant or licensee at a reasonable time to make inspections, as permitted by applicable law, to determine whether the applicant or licensee is complying with this act and the rules promulgated under this act. On-site inspections may be conducted without prior notice to the adult foster care facility. A health and sanitation inspection of an adult foster care facility shall be conducted upon the request of the department by 1 of the following: (a) Department staff.

(b) The department of public health.

(c) A local health department.

(2) The department of public health, the fire marshal division of the department of state police, or local authorities, in carrying out this act, may visit an adult foster care facility more often than annually to advise in matters affecting health or fire protection. Inspections shall be made as permitted by law.

(3) An adult foster care facility shall be inspected for fire safety by 1 of the following: (a) Department staff, if the facility is licensed or proposed to be licensed for 6 or fewer adults. The department may request that a fire safety inspection be completed or caused to be completed by the state fire marshal, for a facility licensed or proposed to be licensed for 6 or fewer adults, when such an inspection would result in the efficient administration of this act.

(b) The state fire marshal or the designated representative of the state fire marshal, if the facility is licensed or proposed to be licensed for more than 6 adults. The state fire marshal shall inspect or cause to be inspected for fire safety an adult foster care facility licensed or proposed to be licensed for 6 or fewer adults upon request by the department. The state fire marshal may contract with the fire marshal of a city having a population of not less than 1,000,000 to inspect adult foster care facilities licensed or proposed to be licensed for more than 6 adults if the facility is located within that city. The fire marshal of a city shall conduct an inspection in compliance with procedures established and on forms provided by the state fire marshal.

(4) Except as provided in subsection (3)(b) and section 10(2), the inspector shall administer and enforce the rules promulgated by the department.

(5) Upon receipt of a request from an adult foster care facility for certification of a specialized program for developmentally disabled or mentally ill adults, the department of mental health shall inspect the facility to determine whether the proposed specialized program conforms with the requirements of applicable law and rules. The department of mental health shall provide the department with an inspection report and a certification, denial of certification, or certification with limited terms for the proposed specialized program. The department of mental health shall reinspect a certified specialized program not less than once biennially and notify the department of social services in the same manner as for the initial certification. In carrying out this subsection, the department of mental health may contract with a county community mental health board or any other agency for services.

(6) Inspection reports required by this section shall be furnished to the department and shall be used in the evaluation for licensing of an adult foster care facility. The department shall consider the reports carefully and may make special consultations if necessary. The department shall be responsible for the final determination of the issuance, denial, or revocation and the temporary or provisional nature of a license issued to an adult foster care facility. A report of the department's findings shall be furnished to the licensee or applicant.

(7) The inspection reports required by this section shall be available for public inspection during reasonable business hours.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

400.712 Keeping and maintaining records and reports; examination and copying of books, records, and reports; confidentiality; inspection of records by resident.

Sec. 12. (1) The department may prescribe appropriate records to be kept and maintained regarding each adult received by a licensee and may require reports, upon forms furnished or approved by the department, setting forth facts or circumstances related to the care of adults received by the licensee.

(2) The department may examine the books, records, and reports of a facility. Members of the department shall be provided reasonable facilities for the thorough examination and copying of the books, records, and reports of the facility.

(3) The records of the residents of a facility which are required to be kept by the facility under this act or rules promulgated under this act shall be confidential and properly safeguarded. These materials shall be open only to the inspection of the director, an agent of the director, another executive department of the state pursuant to a contract between that department and the facility, a party to a contested case involving the facility, or on the order of a court or tribunal of competent jurisdiction. The records of a resident of a facility which are required to be kept by the facility under this act or rules promulgated under this act shall be open to inspection by the resident, unless medically contraindicated, or the guardian of a resident.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

400.713. License required; application; form; investigation; on-site evaluation; issuance or renewal of license; disclosures; maximum number of persons; stating type of specialized program; issuance of license to specific person at specific location; transferability of license; sale of facility; notice; items of noncompliance; refusal by department to issue or renew license; conditions; unlicensed facility; violation as misdemeanor; penalty; receipt of completed application; issuance of license within certain time period; inspections; reports; “completed application” defined.

Sec. 13. (1) A person, partnership, corporation, association, or a department or agency of the state, county, city, or other political subdivision shall not establish or maintain an adult foster care facility unless licensed by the department.

(2) Application for a license shall be made on forms provided and in the manner prescribed by the department. The application shall be accompanied by the fee prescribed in section 13a.

(3) Before issuing or renewing a license, the department shall investigate the activities and standards of care of the applicant and shall make an on-site evaluation of the facility. On-site inspections conducted in response to the application may be conducted

without prior notice to the applicant. Subject to subsections (9), (10), and (11), the department shall issue or renew a license if satisfied as to all of the following:

- (a) The financial stability of the facility.
- (b) The applicant's compliance with this act and rules promulgated under this act.
- (c) The good moral character of the applicant, or owners, partners, or directors of the facility, if other than an individual. Each of these persons shall be not less than 18 years of age.
- (d) The physical and emotional ability of the applicant, and the person responsible for the daily operation of the facility to operate an adult foster care facility.
- (e) The good moral character of the person responsible for the daily operations of the facility and all employees of the facility. The applicant shall be responsible for assessing the good moral character of the employees of the facility. The person responsible for the daily operation of the facility shall be not less than 18 years of age.
- (4) The department shall require an applicant or a licensee to disclose the names, addresses, and official positions of all persons who have an ownership interest in the adult foster care facility. If the adult foster care facility is located on or in real estate that is leased, the applicant or licensee shall disclose the name of the lessor of the real estate and any direct or indirect interest that the applicant or licensee has in the lease other than as lessee.
- (5) Each license shall state the maximum number of persons to be received for foster care at 1 time.
- (6) If applicable, a license shall state the type of specialized program for which certification has been received from the department.
- (7) A license shall be issued to a specific person for a facility at a specific location, is nontransferable, and remains the property of the department. The prohibition against transfer of a license to another location does not apply if a licensee's adult foster care facility or home is closed as a result of eminent domain proceedings, if the facility or home, as relocated, otherwise meets the requirements of this act and the rules promulgated under this act.
- (8) An applicant or licensee proposing a sale of an adult foster care facility or home to another owner shall provide the department with advance notice of the proposed sale in writing. The applicant or licensee and other parties to the sale shall arrange to meet with specified department representatives and shall obtain before the sale a determination of the items of noncompliance with applicable law and rules that shall be corrected. The department shall notify the respective parties of the items of noncompliance before the change of ownership, shall indicate that the items of noncompliance shall be corrected

as a condition of issuance of a license to the new owner, and shall notify the prospective purchaser of all licensure requirements.

(9) The department shall not issue a license to or renew the license of a person who has been convicted of a felony under this act or under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r. The department shall not issue a license to or renew the license of a person who has been convicted of a misdemeanor under this act or under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r, for a period of 10 years after the conviction.

(10) If the department has revoked, suspended, or refused to renew a person's license for an adult foster care facility according to section 22, the department may refuse to issue a license to or renew a license of that person for a period of 5 years after the suspension, revocation, or nonrenewal of the license.

(11) The department may refuse to issue a license to or renew the license of an applicant if the department determines that the applicant has a relationship with a former licensee whose license under this act has been suspended, revoked, or nonrenewed under subsection (9) or section 22 or a convicted person to whom a license has been denied under subsection (9). This subsection applies for 5 years after the suspension, revocation, or nonrenewal of the former licensee's license or the denial of the convicted person's license. For purposes of this subsection, an applicant has a relationship with a former licensee or convicted person if the former licensee or convicted person is involved with the facility in 1 or more of the following ways:

- (a) Participates in the administration or operation of the facility.
- (b) Has a financial interest in the operation of the facility.
- (c) Provides care to residents of the facility.
- (d) Has contact with residents or staff on the premises of the facility.
- (e) Is employed by the facility.
- (f) Resides in the facility.

(12) If the department determines that an unlicensed facility is an adult foster care facility, the department shall notify the owner or operator of the facility that it is required to be licensed under this act. A person receiving the notification required under this section who does not apply for a license within 30 days is subject to the penalties described in subsection (13).

(13) Subject to subsection (12), a person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years or a fine of not more than \$50,000.00, or both. A person who has been convicted of a violation of subsection (1) who commits a second or subsequent violation is guilty of a felony,

punishable by imprisonment for not more than 5 years or a fine of not more than \$75,000.00, or both.

(14) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.

(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(15) The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(16) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. Failure to issue or deny a license within the time period required under this section does not allow the department to otherwise delay processing an application. The completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(17) If, on a continual basis, inspections performed by a local health department delay the department in issuing or denying licenses under this act within the 6-month period, the department may use department staff to complete the inspections instead of the local health department causing the delays.

(18) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with human services issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 6-month time period described in subsection (14).

(b) The number of applications requiring a request for additional information.

- (c) The number of applications rejected.
- (d) The number of licenses not issued within the 6-month period.
- (e) The average processing time for initial and renewal licenses granted after the 6-month period.

(19) As used in this section, “completed application” means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. Beginning October 1, 2005, a completed application does not include a health inspection performed by a local health department.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 1992, Act 176, Imd. Eff. July 23, 1992;—Am. 1994, Act 150, Imd. Eff. June 7, 1994;—Am. 2004, Act 59, Eff. Aug. 1, 2004 ; Act 281, Imd. Eff. July 23, 2004.

400.713a Fees.

Sec. 13a. (1) Application fees for an individual, partnership, firm, corporation, association, governmental organization, or nongovernmental organization licensed or seeking licensure under this act are as follows:

(a) Application fee for a temporary license:

(i) Family home	\$ 65.00
(ii) Small group home (1-6)	105.00
(iii) Small group home (7-12)	135.00
(iv) Large group home	170.00
(v) Congregate facility	220.00
(vi) Camp	40.00

(b) Application fee for subsequent licenses:

(i) Family home	\$ 25.00
(ii) Small group home (1-6)	25.00
(iii) Small group home (7-12)	60.00
(iv) Large group home	100.00
(v) Congregate facility	150.00
(vi) Camp	25.00

(2) Fees collected under this act shall be credited to the general fund of the state to be appropriated by the legislature to the department for the enforcement of this act.

(3) The department shall use a portion of the fees collected to inspect new adult foster care facilities for fiscal year 1991-1992.

History: Add. 1992, Act 176, Imd. Eff. July 23, 1992; Act 285, Imd. Eff. July 23, 2004.

400.714 Temporary license; issuance of regular license or provisional license; refusal to issue license; temporary license nonrenewable; plan of correction.

Sec. 14. (1) A temporary license shall be issued to an adult foster care facility for the first 6 months of operation if the adult foster care facility has not previously been licensed as an adult foster care facility. At the end of the first 6 months of operation, the department shall issue a regular license, issue a provisional license, or refuse to issue a license in the manner provided for in section 22. A temporary license shall not be renewed.

(2) Before issuing a temporary license, the department may require an adult foster care facility to submit to the department an acceptable plan of correction for the adult foster care facility. The adult foster care facility shall implement the plan of correction within the time limitations of the temporary license period.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.715 Temporary license; adult foster care congregate facility.

Sec. 15. (1) The department shall not issue a temporary license to an adult foster care congregate facility, except a facility which is to replace an adult foster care congregate facility licensed on March 27, 1984 and is a new construction; satisfies all applicable state construction code requirements and the fire safety requirements prescribed by section 20; and the bed capacity does not exceed that of the licensed facility which it replaces.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

400.716 Temporary license; prohibitions.

Sec. 16. (1) Unless the city, village, or township approves a temporary license, a temporary license shall not be granted under this act if the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within a city, village, or township of this state.

(2) A temporary license shall not be granted under this act if the proposed adult foster care facility for more than 6 adults has not obtained zoning approval or obtained a

special or conditional use permit if required by an ordinance of the city, village, or township in which the proposed facility is located.

(3) The department shall not issue a temporary license to an adult foster care facility which does not comply with section 16a of Act No. 183 of the Public Acts of 1943, as amended, being section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws.

(4) This section shall not apply to an applicant who has purchased a facility and the facility, at the time of the purchase, or for 1 year preceding the application, was licensed under this act or an act repealed by this act.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.717 Provisional license.

Sec. 17. (1) A provisional license may be issued to an adult foster care facility that has previously held a temporary or regular license under this act or an act repealed by this act. A provisional license may be issued for 6 months if an adult foster care facility is temporarily unable to conform to the requirements of this act for a regular license and may be renewed not more than 2 consecutive times as provided in subsections (2) and (4). The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan of correction for the adult foster care facility within the time limitations of the provisional period.

(2) If the provisional license is issued for deficiencies in the physical plant of the adult foster care facility, the provisional license may be renewed for not more than 2 consecutive 6-month terms for the same physical plant deficiencies.

(3) If the provisional license is issued for deficiencies in the quality of care provided in the adult foster care facility, the provisional license is not renewable. If the quality of care deficiencies are corrected and intervening deficiencies of any kind are not incurred, a regular license shall be issued.

(4) If a provisional license has been issued because of deficiencies in both the quality of care and the physical plant of the adult foster care facility, the provisional license may be renewed under subsection (2) if the quality of care deficiencies have been corrected.

(5) The department shall notify the applicant of the reasons for issuing a provisional license and shall designate whether the deficiencies are physical plant deficiencies or quality of care deficiencies.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

400.718 Special license; rules.

Sec. 18. (1) A special license may be issued for the duration of the operation of an adult foster care facility if the applicant is a short-term operation.

(2) The department may promulgate rules regulating the issuance and duration of special licenses.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.719 Regular license; issuance; validity; application for temporary license; subsection (4) applicable to previously licensed facilities.

Sec. 19. (1) A regular license shall be issued to an adult foster care facility which is in compliance with the requirements of this act and rules promulgated under this act for issuance of a regular license.

(2) A regular license for all adult foster care facilities except adult foster care camps is valid for 2 years after the date of issuance unless revoked as authorized by section 22 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be renewed biennially on application and approval.

(3) A regular license for an adult foster care camp is effective for the specific dates of operation not to exceed a 12-month period unless revoked as authorized by section 22 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be renewed annually on application and approval.

(4) Any increase beyond 6 in the number of persons to be received for foster care at 1 time in a small group home requires application for a temporary license pursuant to sections 14 and 16. This subsection applies to facilities that have been previously licensed.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

400.720 Certificate of approval from state fire marshal division or state department of mental health; compliance; denial or certification with limitations; hearing.

Sec. 20. (1) The department shall not issue a temporary, provisional, or regular license to an adult foster care facility whose capacity is more than 6 adults until the facility receives a certificate of approval from the state fire marshal division of the department of state police after compliance with fire safety standards prescribed in rules promulgated by the state fire safety board pursuant to section 10(2).

(2) The department shall not issue a license to an adult foster care facility indicating approval to operate a specialized program for developmentally disabled adults or mentally ill adults until the facility receives a certificate of approval from the state department of mental health as required under section 11(5).

(3) A licensee or applicant who is denied a certificate of approval by the state fire marshal division of the department of state police or who is denied or certified with limitations for a specialized program by the department of mental health may request a hearing. The hearing shall be conducted by the state fire safety board or the department of mental health, as applicable, pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

400.721 Facility licensed on March 27, 1980; compliance with fire safety standards; section inapplicable to installation of smoke and heat detection equipment.

Sec. 21. (1) Except as provided in subsection (2), an adult foster care facility licensed on March 27, 1980 shall be considered to be in compliance with the fire safety standards prescribed in rules promulgated under this act if the facility meets the fire safety standards prescribed in rules promulgated under former Act No. 287 of the Public Acts of 1972 which were in effect on March 27, 1980.

(2) This section does not apply to the installation of smoke and heat detection equipment as required by rules promulgated pursuant to this act.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1986, Act 257, Eff. Mar. 31, 1987.

400.722. Denying, suspending, revoking, refusing to renew, or modifying license; grounds; notice; hearing; decision; protest; receiving or maintaining adults requiring foster care as felony; penalty; relocation services; emergency license.

Sec. 22. (1) The department may deny, suspend, revoke, or refuse to renew a license, or modify a regular license to a provisional license, if the licensee falsifies information on the application for license or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license.

(2) The department may suspend, revoke, or modify a license of an applicant if the department determines that the applicant has a relationship with a former licensee whose license under this act has been suspended, revoked, or nonrenewed under this section or section 13(9) or a convicted person to whom a license has been denied under section 13(9). This subsection applies for 10 years after the suspension, revocation, or nonrenewal of the former licensee's license or the denial of the convicted person's license. As used in this subsection, an applicant has a relationship with a former licensee or convicted person if the former licensee or convicted person is involved with the facility in 1 or more of the following ways:

(a) Participates in the administration or operation of the facility.

(b) Has a financial interest in the operation of the facility.

- (c) Provides care to residents of the facility.
- (d) Has contact with residents or staff on the premises of the facility.
- (e) Is employed by the facility.
- (f) Resides in the facility.

(3) A license shall not be denied, suspended, or revoked, a renewal shall not be refused, and a regular license shall not be modified to a provisional license unless the department gives the licensee or applicant written notice of the grounds of the proposed denial, revocation, refusal to renew, or modification. If the licensee or applicant appeals the denial, revocation, refusal to renew, or modification by filing a written appeal with the director within 30 days after receipt of the written notice, the director or the director's designated representative shall conduct a hearing at which the licensee or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee or applicant by personal service or delivery to the proper address by registered mail not less than 2 weeks before the date of the hearing. The decision of the director shall be made and forwarded to the protesting party by registered mail not more than 30 days after the hearing. If the proposed denial, revocation, refusal to renew, or modification is not protested within 30 days, the license shall be denied, revoked, refused, or modified.

(4) If the department has revoked, suspended, or refused to renew a license, the former licensee shall not receive or maintain in that facility an adult who requires foster care. A person who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 5 years or a fine of not more than \$75,000.00, or both.

(5) If the department has revoked, suspended, or refused to renew a license, relocation services shall be provided to adults who were being served by the formerly licensed facility, upon the department's determination that the adult or his or her designated representative is unable to relocate the adult in another facility without assistance. The relocation services shall be provided by the responsible agency, as defined in administrative rules, or, if the adult has no agency designated as responsible, by the department.

(6) In the case of facilities that are operated under lease with a state department or a community mental health services board, the department may issue an emergency license for a 90-day period to avoid relocation of residents following the revocation, suspension, or nonrenewal of a license, if all of the following requirements are met:

- (a) The leased physical plant is in substantial compliance with all licensing requirements.
- (b) The applicant for the emergency license is a licensee who is in compliance with all applicable regulations under this act and under contract with a state department or a community mental health services board to operate the leased physical plant temporarily.

(c) The former licensee's access to the facility according to a lease, sublease, or contract has been lawfully terminated by the owner or lessee of the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1990, Act 262, Eff. Mar. 28, 1991;—Am. 1994, Act 150, Imd. Eff. June 7, 1994;—Am. 2004, Act 59, Eff. Aug. 1, 2004.

400.723 Complaint; specifications; resolution of issues; notice; failure to resolve issues; hearing; decision; finality; issuance of license.

Sec. 23. (1) The legislative body of a city, village, or township in which an adult foster care facility is located may file a complaint with the department to have the facility's license denied or revoked pursuant to the procedures prescribed in this act and the rules promulgated under this act. The complaint shall specify those provisions of this act or the rules promulgated under this act with which the facility is not in compliance.

(2) The department shall resolve the issues of a complaint filed pursuant to subsection (1) within 45 days after receipt of the complaint. Notice of the resolution of the issues shall be mailed by registered mail to the complainant and the licensee. Failure of the department to resolve the issues of the complaint within 45 days after receipt of the complaint shall serve as a decision by the department to deny or revoke the facility's license, and the licensee shall be notified pursuant to section 22.

(3) If the decision to deny or revoke the license or the resolution of the issues is protested by written objection of the complainant or licensee to the department within 30 days after the denial or revocation of the license or the receipt of the notice pertaining to the denial or revocation, the director or the director's designated representative shall conduct a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended. The decision of the director shall be mailed by registered mail to the complainant and the licensee. If the resolution of the issues by the director is not protested within 30 days after receipt of the notice of the resolution, the resolution by the director is final. The department may issue a license pending the resolution of the matter.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.724 Request for investigation; providing substance of complaint; disclosures; determining violation; initiation of investigation; findings; written determination or status report; final report; additional copies of documents; reimbursement; informing licensee of findings; public inspection of written determination; hearing; appeal.

Sec. 24. (1) A person who believes that this act or a rule promulgated under this act may have been violated may request an investigation of an adult foster care facility. The request shall be submitted to the department in writing or the department shall assist the person in reducing an oral complaint to writing within 7 days after the oral request is made.

(2) The substance of the complaint shall be provided to the licensee not earlier than at the commencement of the on-site inspection of the adult foster care facility which takes place pursuant to the complaint.

(3) The complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the adult foster care facility shall not disclose the name of the complainant or an adult resident named in the complaint unless the complainant or an adult resident consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If disclosure is considered essential to the investigation, the complainant shall be given the opportunity to withdraw the complaint before disclosure.

(4) Upon receipt of a complaint, the department shall determine, based on the allegations presented, whether this act or a rule promulgated under this act has been, is, or is in danger of being violated. The department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.

(5) The department shall inform the complainant of its findings. Within 30 days after the receipt of complaint, the department shall provide the complainant a copy, if any, of the written determination or a status report indicating when these documents may be expected. The final report shall include a copy of the original complaint. The complainant may request additional copies of the documents listed in this subsection and shall reimburse the department for the copies pursuant to established policies and procedures.

(6) The department shall inform the licensee of the department's findings at the same time that the department informs the complainant pursuant to subsection (5).

(7) A written determination concerning a complaint shall be available for public inspection, but the name of the complainant or adult resident shall not be disclosed without the complainant's or adult resident's consent.

(8) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A request for a hearing shall be submitted in writing to the director within 30 days after the mailing of the department's findings as described in subsection (5). Notice of the time and place of the hearing shall be sent to the complainant and the adult foster care facility. A complainant who is dissatisfied with the decision of the director may appeal by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director with a copy of the affidavit. The circuit court of the county in which the complainant resides shall have jurisdiction to hear and determine the questions of fact or law involved in the appeal.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.725 Appeal to circuit court.

Sec. 25. A person aggrieved by the decision of the director following a hearing under section 22 or 23, within 10 days after receipt of decision, may appeal to the circuit court for the county in which the person resides by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director with a copy of the affidavit. The circuit court shall have jurisdiction to hear and determine the questions of fact or law involved in the appeal. If the department prevails, the circuit court shall affirm the decision of the department; if the licensee, or applicant prevails, the circuit court shall set aside the revocation or order the issuance or renewal of the license.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.726 Name or designation of facility.

Sec. 26. (1) An adult foster care facility shall not utilize a name or designation which implies, infers, or leads the public to believe that the facility provides nursing care.

(2) An adult foster care facility shall not include in its name the name of a religious, fraternal, or charitable corporation, organization, or association unless the corporation, organization, or association is an owner of the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.726a Resident enrolled in licensed hospice program; exception to continuous nursing care requirement for purposes of § 400.703(4); do-not-resuscitate order included in assessment plan; protection to resident.

Sec. 26a. (1) A resident of an adult foster care facility who is enrolled in a licensed hospice program is not considered to require continuous nursing care for purposes of section 3(4).

(2) A licensee providing foster care to a resident who is enrolled in a licensed hospice program and whose assessment plan includes a do-not-resuscitate order is considered to be providing protection to the resident for purposes of section 6(4) and the rules promulgated under this act if, in the event the resident suffers cessation of both spontaneous respiration and circulation, the licensee contacts the licensed hospice program.

History: Add. 1996, Act 194, Eff. Aug. 1, 1996.

400.726b Adult foster care; description of services to patients or residents with alzheimer's disease; contents; "represents to the public" defined.

Sec. 26b. (1) Beginning not more than 90 days after the effective date of the amendatory act that added this section, an adult foster care large group home, an adult foster care small group home, or an adult foster care congregate facility that represents to the public that it provides inpatient or residential care or services, or both, to persons with Alzheimer's disease or related conditions shall provide to each prospective patient,

resident, or surrogate decision maker a written description of the services provided by the home or facility to patients or residents with Alzheimer's disease or related conditions. A written description shall include, but not be limited to, all of the following: (a) The overall philosophy and mission reflecting the needs of residents with Alzheimer's disease or related conditions.

(b) The process and criteria for placement in or transfer or discharge from a program for residents with Alzheimer's disease or related conditions.

(c) The process used for assessment and establishment of a plan of care and its implementation.

(d) Staff training and continuing education practices.

(e) The physical environment and design features appropriate to support the function of residents with Alzheimer's disease or related conditions.

(f) The frequency and types of activities for residents with Alzheimer's disease or related conditions.

(g) Identification of supplemental fees for services provided to patients or residents with Alzheimer's disease or related conditions.

(2) As used in this section, "represents to the public" means advertises or markets the facility as providing specialized Alzheimer's or dementia care services.

History: Add. 2000, Act 476, Imd. Eff. Jan. 11, 2001.

400.727 Posting license, inspection report, and other documents; retention of materials for public inspection.

Sec. 27. (1) A licensee operating an adult foster care congregate facility shall conspicuously post all of the following in an area of the facility accessible to residents, employees, and visitors: (a) A current license.

(b) A complete copy of the most recent inspection report of the facility received from the department.

(c) A description, provided by the department, of complaint procedures established under this act and the name, address, and telephone number of a person authorized by the department to receive complaints.

(d) A complete list of materials available for public inspection which the facility is required to retain under subsection (2).

(2) A licensee operating an adult foster care congregate facility shall retain all of the following for public inspection: (a) A complete copy of each inspection report of the facility received from the department during the past 5 years.

(b) A description of the services provided by the facility and the rates charged for those services and items for which a resident may be separately charged.

(c) A list of the name, address, and official position of each person having an ownership interest in the facility as required by section 13(4).

(d) A list of personnel employed or retained by the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.728 Repealed. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

400.729 Providing foster care to person related to licensee or licensee's spouse.

Sec. 29. This act shall not prohibit an adult foster care facility from providing foster care to a person related to the licensee or the licensee's spouse for compensation or otherwise. The related person shall be considered in determining the number of residents being cared for in the facility if the person is provided adult foster care services for compensation.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.730 Injunction.

Sec. 30. The attorney general, on behalf of the department, may seek an injunction against an adult foster care facility in either of the following cases: (a) The facility is being operated without a license in violation of section 13.

(b) A licensee violates this act or a rule promulgated under this act and the violation may result in serious harm to the residents under care.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1992, Act 176, Imd. Eff. July 23, 1992.

400.731 Violation as misdemeanor; prohibited conduct.

Sec. 31. (1) Except as otherwise provided in section 13 or section 22, a person, adult foster care facility, agency, or representative or officer of a corporation, association, or organization who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) A person convicted of a misdemeanor under this act or under chapter XXA of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.145m to 750.145r of the Michigan Compiled Laws, shall not be involved with an adult foster care facility for a period of 5 years after the conviction in any of the following ways: (a) Participate in the administration or operation of the facility.

(b) Have a financial interest in the operation of the facility.

(c) Provide care to residents of the facility.

(d) Have contact with residents or staff on the premises of the facility.

(e) Be employed by the facility.

(f) Reside in the facility.

(3) A person convicted of a felony under this act or under chapter XXA of Act No. 328 of the Public Acts of 1931 shall not be involved with an adult foster care facility in any of the following ways: (a) Participate in the administration or operation of the facility.

(b) Have a financial interest in the operation of the facility.

(c) Provide care to residents of the facility.

(d) Have contact with residents or staff on the premises of the facility.

(e) Be employed by the facility.

(f) Reside in the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1990, Act 262, Eff. Mar. 28, 1991;—Am. 1994, Act 150, Imd. Eff. June 7, 1994.

400.731a Person sentenced to perform community service.

Sec. 31a. (1) In addition to or as an alternative to imposing a term of imprisonment under this act, the court may sentence the person to perform community service as follows: (a) If the person is convicted of a felony, community service for not more than 160 days.

(b) If the person is convicted of a misdemeanor, community service for not more than 80 days.

(2) For purposes of this section, community service shall not include activities involving interaction with or care of vulnerable adults.

(3) A person sentenced to perform community service under this section shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 1994, Act 150, Imd. Eff. June 7, 1994.

400.732 Notices required.

Sec. 32. (1) The department shall notify the clerk of the city, village, or township where a proposed adult foster care facility is to be located at least 45 days before the issuance of a license.

(2) The department shall notify the clerk of the city, village, or township of all newly licensed adult foster care facilities within 30 days after the issuance of a license.

(3) The department shall notify the clerk of the city, village, or township of the location of all licensed adult foster care facilities within the boundaries of that city, village, or township within 30 days after receipt of the request.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.733 Local ordinances, regulations, or construction codes.

Sec. 33. This act supersedes all local regulations applicable specifically to adult foster care facilities. Local ordinances, regulations, or construction codes regulating institutions shall not be applied to adult foster care large group homes, adult foster care small group homes, or adult foster care family homes. This section shall not be construed to exempt adult foster care facilities from local construction codes which are applicable to private residences.

History: 1979, Act 218, Eff. Mar. 27, 1980.

400.734 Repealed. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

400.734a. Repealed. 2006, Act. 29, Imd. Eff. Apr. 1, 2006.

400.734b. Employing or contracting with certain employees providing direct services to residents; prohibitions; criminal history check; exemptions; written consent and identification; conditional employment; use of criminal history record information; disclosure; failure to conduct criminal history check; automated fingerprint identification system database; report to legislature; costs; definitions.

Sec. 34b. (1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility after the effective date of this section if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms

and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract:

(i) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

(ii) A felony involving cruelty or torture.

(iii) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(iv) A felony involving criminal sexual conduct.

(v) A felony involving abuse or neglect.

(vi) A felony involving the use of a firearm or dangerous weapon.

(vii) A felony involving the diversion or adulteration of a prescription drug or other medications.

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract.

(d) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 10 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

(ii) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(iii) A misdemeanor involving criminal sexual conduct.

(iv) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).

(v) A misdemeanor involving abuse or neglect.

(e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

(ii) A misdemeanor involving home invasion.

(iii) A misdemeanor involving embezzlement.

(iv) A misdemeanor involving negligent homicide.

(v) A misdemeanor involving larceny unless otherwise provided under subdivision (g).

(vi) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).

(vii) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.

(ii) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

(iii) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided under subdivision (g).

(g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of conviction, is under the age of 18.

(ii) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (6), an adult foster care facility shall not employ or independently contract with an individual who has direct access to residents after the effective date of this section until the adult foster care facility conducts a criminal history check in compliance with subsections (4) and (5). This subsection and subsection (1) do not apply to an individual who is employed by or under contract to an adult foster care facility before the effective date of this section. Within 24 months after the effective date of this section, an individual who is exempt under this subsection shall provide the department of state police a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subsection is not limited to working within the adult foster care facility with which he or she is employed by or under independent contract with on the effective date of this section. That individual may transfer to another adult foster care facility that is under the same ownership with which he or she was employed or under contract. If that individual wishes to transfer to an adult foster care facility that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new facility in accordance with subsection (4). If an individual who is exempt under this subsection is subsequently convicted of a crime or offense described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), he or she is no longer exempt and shall be terminated from employment or denied employment.

(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section. The individual, at the time of initial application, shall provide identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), the adult foster care facility that has made a good faith offer of employment or independent contract shall make a request to the department of state police to conduct a criminal history check on the individual and input the individual's fingerprints into the automated fingerprint identification system database, and shall make a request to the relevant licensing or regulatory department to perform a check of all relevant registries established pursuant to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. The request shall be made in a manner prescribed by the department of state police and the relevant licensing or regulatory department or agency.

The adult foster care facility shall make the written consent and identification available to the department of state police and the relevant licensing or regulatory department or agency. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The adult foster care facility shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. The department of state police shall conduct an initial criminal history check on the individual named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection that contains a criminal record. The report shall contain any criminal history record information on the individual maintained by the department of state police.

(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility, the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the individual. An individual described in this subsection shall provide the department of state police with a set of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) and the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination, the department shall notify the adult foster care facility and the individual in writing of the type of crime disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination without disclosing the details of the crime. The notification shall inform the facility or agency and the applicant regarding the appeal process in section 34c. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under subsection (4).

(6) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:

(a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual.

(b) The individual signs a written statement indicating all of the following:

(i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) to (g) within the applicable time period prescribed by subsection (1)(a) to (g).

(ii) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(iv) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statement under subparagraphs (i) to (iii), his or her employment will be terminated by the adult foster care facility as required under subsection (1) unless and until the individual can prove that the information is incorrect.

(v) That he or she understands the conditions described in subparagraphs (i) to (iv) that result in the termination of his or her employment and that those conditions are good cause for termination.

7) The department shall develop and distribute the model form for the statement required under subsection (6)(b). The department shall make the model form available to adult foster care facilities upon request at no charge.

(8) If an individual is conditionally employed under subsection (6), and the report described in subsection (4) or (5), if applicable, does not confirm the individual's statement under subsection (6)(b)(i) to (iii), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(9) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (6)(b)(i) to (iii) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(10) An adult foster care facility shall use criminal history record information obtained under subsection (4) or (5) only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (6) and (8). An adult foster care facility or an employee of the adult foster care facility shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) or (5) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than

93 days or a fine of not more than \$1,000.00, or both. Upon written request from another adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency that is considering employing or independently contracting with an individual, an adult foster care facility that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency. Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection.

(11) As a condition of continued employment, each employee or independent contractor shall do both of the following:

(a) Agree in writing to report to the adult foster care facility immediately upon being arraigned on 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon becoming the subject of a substantiated finding described under subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(12) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of an adult foster care facility who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(13) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective adult foster care facility with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(14) If an individual independently contracts with an adult foster care facility, subsections (1) and (2) do not apply if the contractual work performed by the individual is not directly

related to the clinical, health care, or personal services delivered by the adult foster care facility or if the individual's duties are not performed on an ongoing basis with direct access to residents. This exception includes, but is not limited to, an individual who independently contracts with the adult foster care facility to provide utility, maintenance, construction, or communication services.

(15) Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

- (a) The impact and effectiveness of this amendatory act.
- (b) The feasibility of implementing criminal history checks on volunteers who work in the adult foster care facilities and on state agency employees who are involved in the licensing of the adult foster care facilities and regulation of the employees.
- (c) The amount of federal funds provided to implement a pilot program for national and state criminal history checks on direct access employees of long-term care facilities or providers, the amount of those funds expended to date, and the amount of those funds remaining.

(16) By March 1, 2007, the department and the department of state police shall develop and implement an electronic web-based system to assist the adult foster care facilities required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to the adult foster care facilities for the individuals entered in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(17) The department shall submit to the legislature not later than 3 years after the effective date of the amendatory act that added this subsection a written report regarding the department's plan to continue performing criminal history checks if adequate federal funding is not available to continue performing future criminal history checks.

18) An adult foster care facility or a prospective employee covered under this section may not be charged for the cost of an initial criminal history check required under this act.

(19) As used in this section:

- (a) "Direct access" means access to a resident or resident's property, financial information, medical records, treatment information, or any other identifying information.
- (b) "Health facility or agency" means a health facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.
- (c) "Independent contract" means a contract entered into by an adult foster care facility with an individual who provides the contracted services independently or a contract entered into by an adult foster care facility with an organization or agency that employs or contracts with

an individual after complying with the requirements of this section to provide the contracted services to the adult foster care facility on behalf of the organization or agency.

(d) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

History: Add. 2006, Act 29, Eff. Apr. 1, 2006

400.734c. Disqualification from or denial of employment based on criminal history check; appeal; decision; report to legislature; "business day" defined.

Sec. 34c. (1) An individual who has been disqualified from or denied employment by an adult foster care facility based on a criminal history check conducted pursuant to section 34a or 34b may appeal to the department if he or she believes that the criminal history report is inaccurate, and the appeal shall be conducted as a contested case hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The individual shall file the appeal with the director of the department within 15 business days after receiving the written report of the criminal history check unless the conviction contained in the criminal history report is one that may be expunged or set aside. If an individual has been disqualified or denied employment based on a conviction that may be expunged or set aside, then he or she shall file the appeal within 15 business days after a court order granting or denying his or her application to expunge or set aside that conviction is granted. If the order is granted and the conviction is expunged or set aside, then the individual shall not be disqualified or denied employment based solely on that conviction. The director shall review the appeal and issue a written decision within 30 business days after receiving the appeal. The decision of the director is final.

(2) One year after the effective date of this section and each year thereafter for the next 3 years, the department shall provide the legislature with a written report regarding the appeals process implemented under this section for employees subject to criminal history checks. The report shall include, but is not limited to, for the immediately preceding year the number of applications for appeal received, the number of inaccuracies found and appeals granted with regard to the criminal history checks conducted under section 34b, the average number of days necessary to complete the appeals process for each appeal, and the number of appeals rejected without a hearing and a brief explanation of the denial.

3) As used in this section, "business day" means a day other than a Saturday, Sunday, or any legal holiday.

History: Add. 2006, Act 29, Eff. Apr. 1, 2006

400.735 Repeal of §§ 331.681 to 331.694.

Sec. 35. Act No. 287 of the Public Acts of 1972, as amended, being sections 331.681 to 331.694 of the Michigan Compiled Laws, is repealed.

History: 1979, Act 218, Eff. Mar. 27, 1980;—Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

400.736. Concurrent license as foster family home or foster family group home; receiving additional minor children; definitions.

Sec. 36. (1) An adult foster care family home may be concurrently licensed as a foster family home or a foster family group home. Except as provided in subsection (2), additional minor children who are not related to a resident of the adult foster care family home shall not be received in the adult foster care family home after the filing of an application for a license under this act.

(2) A licensee may receive a minor child placed in foster care under the laws of this state after filing an application for a license under this act. A placement under this subsection shall be approved at the discretion of the director or his or her designee and shall be based upon a recommendation by a licensed child placing agency or an approved governmental unit and shall be subject to appropriate terms and conditions determined by the department.

(3) As used in this section:

(a) "Foster family home" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(b) "Foster family group home" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

History: Add. 1984, Act 140, Imd. Eff. June 1, 1984;—Am. 2004, Act 59, Eff. Aug. 1, 2004.

400.737 Concurrently licensing adult foster care small group home as child caring institution; receiving additional children under 18 years of age; limitation on combined licensed capacity; definition.

Sec. 37. (1) An adult foster care small group home may be concurrently licensed as a child caring institution. Additional children under 18 years of age who are not related to a resident of the adult foster care small group home shall not be received in the adult foster care small group home after the filing of an application for a license pursuant to this act. The combined licensed capacity shall not exceed more than a combination of 6 children and adults.

(2) As used in this section, "child caring institution" means that term as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

History: Add. 1984, Act 140, Imd. Eff. June 1, 1984.



STATE OF MICHIGAN
Department of Human Services

QUANTITY:	3,500
COST:	\$3,063.36 (.87 ea.)
APPROVAL:	DHS Director

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OCAL PUB-39 (Rev. 4-06) Previous editions obsolete.